IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. M/s. Trinity Combines Associates & Another Vs. Prabhu Dayal & Another
(S.B. Civil Company Appeal No.05/2000)

2. Prabhu Dayal Chitlangia Vs. M/s. Trinity Combines Associates & Others
(S.B. Company Appeal No.03/2000)

SB Company Appeals under Section 10F of the Companies Act,1956 against the order dated 20-1-2000 passed by Company Law Board in Company Petition No.19/96 under sections 397 and 398 of the Companies Act,1956.

Date of order: October 13, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. M.M.Ranjan, for the Trinity Combines Associates.

Mr. Mahendra Goyal, for Prabhudayal Chitlangia.

BY THE COURT:

Challenge in these two appeals is the order dated January 20, 2000 of the Company Law Board (for short `CLB') whereby following directions were issued:-

> "In our order dated 7.4.1999, we had observed that non vacation of the shops belonging to the petitioners was a clear act of discrimination and a grave act of oppression against the family share holders and further observed that in view of pending civil proceedings initiated by the respondents for vacation of the shops, we did not propose to pass any order regarding the vacation of the shops. While doing so, we also noted that the lease agreement with the petitioners regarding the shops expired on 15.5.1995. Accordingly we directed that arrears of rent for the shops should be paid to the petitioners without delay. No doubt the company has paid the arrears at the

rate of Rs.550/- per shop as per the lease agreement. Since the lease agreement had already expired and the company is getting a large amount of rent as indicated earlier, non payment of the proportionate increase in the rent to the petitioners is a act of oppression against the petitioners. Accordingly, we direct that the company should pay 75% of the rent received for the 2 shops to the petitioners. Arrears of rent, as calculated above, should be paid latest by March 31, 2000. Since one of the contentions of the respondents was that the company has incurred certain expenditure on the shops at the time when the shops were taken initially taken on lease, we also direct that the company should indicate the amount of expenditure incurred on these shops at the time of shops were taken on lease by the company from the petitioners and adjust the same against the arrears of rent. The company will also actively pursue the civil suit filed by it for getting the shops vacated so that they can be handed over to the petitioners without avoidable delay."

2. Contextual facts depict that two lease deeds were executed between M/s. Trinity Combines Associates Pvt. Ltd. (for short `tenant company') and Prabhu Dayal Chitlangia (for short `Landlord') in regard to shops N. A-48 and A-51. Initially rent of two shops was Rs.325/- per month and presently the rent is Rs.550/- per month. The landlord approached CLB under sections 397 and 398 of the Company Act,1956 (for short `the Act') complaining mismanagement in the affairs of the company and oppressive acts of the directors. CLB issued certain directions on April 7, 1999 and January 21, 1998. However on January 20, 2000 the CLB issued further directions as indicated above.

3. The tenant company seeks to quash the order dated January 20, 2000 of CLB on the following grounds:-

(i) Even after expiry of lease period the tenant still holds the

property in tenancy on the principle of holding over and it could not have been held that the tenant was a tress passer.

(ii) Section 3(iv) of the Rajasthan Premises (Control of Rent and Eviction) Act (for short `Rent Act') defines the term `lease' which includes a sub lease also. Thus the finding of CLB that the tenant company was a tresspasser and liable to pay increased rent is bad.

(iii) The CLB had no jurisdiction to pass a decree of enhancement of rent. The provisions of Section 397 of the Act are not applicable to personal contract. The validity of lease agreement could not have been examined by the CLB.

(iv) Section 5 of the Rent Act mandates that the rent payable is ordinarily as may be agreed between landlord and the tenant. Section 6 provides for fixation of standard rent and for this purpose a suit has to be filed. Section 8 bars a landlord to accept excessive rent otherwise under a decree. The procedure for increasing the rent has been prescribed in Section 10. Reliance is placed on V.Dhanpal Chettiar Vs. Yesodai Ammai (AIR 1979 SC 1745) and Damadi Lal Vs. Parashram (AIR 1976 SC 2229).

4. The landlord however seeks direction that till such time a matching cost of construction of shops leased to the tenant company are not paid by the company, no deduction be made from the arrears of rent to be paid to the landlord by the tenant company pursuant to the order dated January 20, 2000 of the CLB. A direction be also issued to the tenant company to call an extra-ordinary general meeting of the share holders and

place the audited accounts of the company for the period 1995 onwards and proceedings under section 629 of the Act be initiated against Dwarka Prasad Chitlangia and Ramesh Kumar Chitlangia.

5. Before analysing the submissions advanced on behalf of rival parties, it will be appropriate to examine as to what are the rights and liabilities of a `lessee'. Since rights and liabilities of a lessee are not defined under the Rent Act, consideration of Section 108 of the Transfer of Property Act,1882 (for short `TP Act') appears necessary, which reads as under:-

> "108. Rights and liabilities of lessor and lessee.- In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-
>
> (B) Rights and liabilities of the Lessee
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> (d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvions for the time being in force) shall be deemed to be comprised in the lease;
>
> (e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void;
>
> Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;
>
> (f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;
>
> (g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the

lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

(h) the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest;

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;
(o) the lessee may use the property and its products if any as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage building belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;
(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;
(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property."

(Emphasis supplied)

6. A look at clause (d) of Section 108 demonstrates that a lessee is entitled to any accession during the continuance of the lease but if accession is by way of encroachment, he must surrender such accession together with the leased property to the lessor at the expiry of the tenancy. Interpreting clause (j) of Section 108 the Division Bench of this Court in Chimanlal Dalchand Vs. Maharajadhiraj HH Shri Sumersinghji Bahadur of Kishangarh (AIR 1961 Raj.17) held that a lessee is entitled to sub-lease his property but that does not exempt him from the liability to pay rent for the lease. Clause (k) provides that the tenant is bound to disclose the landlord any fact as to the nature or extent of the interest which the tenant is about to take of which the tenant is and the landlord is not aware, and which materially increases the value of such interest.

7. Clause (l) mandates that the tenant is bound to pay or tender, at the proper time and place, the rent to the landlord. Right to rent is vested in landlord. Tenant cannot contract with sub-tenant or third party to divest landlord of that right.

8. In Maung Lon Gyi Vs. K.A.Rahman Chetty (1911 Vol.XII Indian Cases 855) Hon'ble Mr. Justice Parlett of Lower Burma Chief Court indicated as under:-

> "The question, therefore, arises whether the Chetty, the plaintiff in this suit, had a right to the rent of the land. The right to the rent is vested in the landlord, and the tenant cannot contract with a third party to divest his landlord of his right."

9. I find no merit in the submission of Mr.M.M.Ranjan, learned counsel, that the tenant-company although could have charged increased rent from the sub-tenant, the landlord was entitled to receive only that much amount of rent which was agreed between landlord and the tenant-company. The tenant-company which is charging increased rent from the sub-tenant, in my view cannot deprive the landlord from the increased rent since the right to receive the rent is vested in landlord and in view of clause (l) of Section 108 of TP Act the tenant cannot contract with sub-tenant to divest the landlord of that right. This is not the intention of Legislature that the landlord be asked to initiate proceedings under section 11 read with section 10 of the Rent Act for the increase of rent, which had already been increased by the tenant and charged from sub-tenant. The tenant under section 108(k) of TP Act is liable to disclose the landlord that he is charging increased rent from the sub-tenant. The tenant in view of clause (l) of section 108 is bound to pay entire increased rent to the landlord which has been charged by him

from the sub-tenant. Since Rent Act prevailed in Rajasthan does not provide for the liability of tenant, one has to look at section 108 of TP Act for adjusting the liability of the tenant. Their Lordships of the Supreme Court in V. Dhanpal Chettiar Vs. Yesodai Ammai (AIR 1979 SC 1745) indicated as under:- (Para 5)

> "... The topic of transfer of Property other than agricultural land is covered by Entry 6 of List III in the Seventh Schedule to the Constitution. The subject being in the concurrent list, many State Rent Acts have by necessary implication and many of them by starting certain provisions with a non obstante clause have done away with the law engrafted in S.108 of the Transfer of Property Act except in regard to any matter which is not provided for in the State Act either expressly or by necessary implication."

10. In so far as accessions during continuance of the tenancy are concerned, in view of clause (d) of Section 108 of TP Act, such accessions together with the leased property are required to be surrendered by the tenant at the expiry of the tenancy. The amount incurred in accessions can not be adjusted against the arrears of rent in view of the legal position discussed herein above.

11. Their Lordships of the Supreme Court in Needle Industries (India) Ltd. Vs. Needle Industries Newey (India) Holding Ltd. (AIR 1981 SC 1298) indicated that Company Court constituted under the Companies Act,1956 is also conferred with equity jurisdiction and therefore, the principles applicable for granting reliefs against oppression under section 397 would be applicable to the grant of relief under section 398. But, it should also be noted that the Court's power to exercise jurisdiction under section 397 or for that matter under section 398, cannot be defeated by mere

technicalities.

12. In Dhanna Lal Banthia Vs. Gaurav (P) Ltd. (1995)1 Comp.LJ 564 (Raj.) this court held that the court has power under section 398 to make such order as it considers proper if it was of the opinion that the affair of the company are being conducted in a manner prejudicial to the interest of the company.

13. In the instant case undeniably the tenant-company has been paying only a sum of Rs.550/- per month as rent to the landlord, but charging increased rent from the sub-tenant. In the eye of tenant-company, this earning is a business but in my opinion it is an act of oppression against the landlord and the tenant-company cannot be permitted to flout the provisions contained in clauses (j), (k) and (l) of section 108 of TP Act. In my considered opinion, the CLB has rightly held that non payment of the proportionate increase in the rent to the landlord is an act of oppression against the landlord but the other direction limiting the payment of rent to 75% is not valid and it requires modification.

14. As a result of the above discussion, I dispose of the instant appeals in the following terms:-

(i) The appeal of the tenant-company being devoid of merit stands dismissed.

(ii) The appeal of landlord is allowed and it is directed that the tenant-company shall pay 100% of the increased rent received from the sub-tenant for the two shops, to the landlord. The entire increased rent charged from the sub-tenant by the tenant-

company shall be paid latest by November 30, 2006. The expenses incurred on the shops by tenant or sub-tenant, shall not be adjusted against the arrears of rent. If outstanding rent is not paid on or before November 30, 2006, proceedings under section 629 of the Act may be initiated against the defaulting persons.

(iii) The impugned order of CLB stands modified as indicated above.

(iv) There shall be no order as to costs.

(Shiv Kumar Sharma),J.

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